

DECISION



11/ant. 2/659

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-209830

DATE: March 30, 1983

MATTER OF: Hooper Goode, Inc.

DIGEST:

1. A protest contending awardee does not have the capability, experience or staff to perform a contract raises an issue of the awardee's responsibility which GAO will not review without a showing of fraud on part of the procuring agency or that the solicitation contains definitive responsibility criteria which allegedly have been misapplied.
2. A protest contending that the awardee is not qualified to do business in the state where performance will take place, raises an issue that is matter to be resolved between the state and the contractor.
3. A protest contending that personnel who formerly worked for protester now working for the awardee may improperly use protester's proprietary materials in the performance of the contract relates to a dispute between private parties which GAO will not consider under its protest function.
4. A protest contending awardee will be unable to provide required services at the price offered provides no basis for protest since acceptance of a very low offer for a firm-fixed-price contract is not illegal where contracting officer made an affirmative determination of awardee's responsibility and the proposal is otherwise acceptable under the announced evaluation criteria.

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Hooper Goode, Inc. protests the United States Marine Corps' contract award to Organization Systems, Inc. (OSI) under request for proposals (RFP) No. M00027-82-R-0020. The RFP requested proposals to provide instructors and training materials to train Marine Corps recruiters. Hooper Goode, the incumbent contractor, contends that OSI was only recently incorporated and that OSI at the time of award was a suspended corporation and prohibited from doing business in California; that OSI lacks the corporate facilities, experience and staff to perform the contract; that while OSI's program design and training materials are excellent, they were substantially copied from proprietary materials of Hooper Goode; and that OSI's price is too low. The protest is dismissed.

Hooper Goode contends that OSI has been incorporated for less than 3 years and lacks the necessary corporate facilities, experience and support staff. Hooper Goode acknowledges that 4 of OSI's 5 instructors are the same instructors used by Hooper Goode under its previous contract for these services, but Hooper Goode contends that OSI does not have separate and distinct corporate experience to perform the contract. In this regard, the solicitation required a description of the offeror's corporate experience in the field of education and conducting similar training programs along with the resumes of the proposed instructors indicating academic background and teaching experience; it did not require that the experience be separate and apart from that of its instructors. See Energy and Resource Consultants, Inc., B-205636, September 22, 1982, 82-2 CPD 258. The Marine Corps found OSI's description of its corporate experience and the resumes of its proposed instructors to be acceptable and a pre-award survey team, after reviewing OSI's technical capability, labor resource, performance record and ability to meet the delivery schedule, recommended award to OSI.

This protest, therefore, is essentially a challenge to the capacity and capability of OSI to perform the contract requirements and is a challenge to OSI's responsibility. The contracting officer's signature on the contract with OSI constituted his affirmative determination of OSI's responsibility. Defense Acquisition Regulation (DAR) § 1-904.1 (1976 ed.). Our Office does not review affirmative

determinations of responsibility unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Gillette Industries, Inc., B-205476.2, January 5, 1982, 82-1 CPD 13. There is no showing of fraud on the part of the procuring officials and the solicitation contains no definitive responsibility criteria.

OSI also denies that it is not qualified to transact business in the state of California. It claims that it was suspended by the state in error and that the error has since been corrected. In any event, we will not consider this issue because it raises a question as to OSI's legal capacity to perform under state law and is therefore a matter to be resolved between the state and the contractor. Edmonds Mechanical Contractor, Inc., B-206194, February 4, 1982, 82-1 CPD 96; John Baker Janitorial, Inc., B-206292, February 22, 1982, 82-1 CPD 157.

We also will not review the allegation that personnel who formerly worked for Hooper Goode may improperly use the protester's proprietary materials in the performance of the contract¹ because this is essentially a dispute between private parties which cannot be adjudicated by this Office. See William Brill Associates, Inc., B-190967, August 7, 1978, 78-2 CPD 95.

Hooper Goode also contends that because OSI's price is 30 percent under its price, OSI's price should be "reevaluated" for price realism and that all of its facilities and costs should be audited. We note, however, that the solicitation specifically states that the prices proposed will be evaluated for price realism to determine the offeror's ability to project reasonable prices and to show the offeror's understanding of the nature and scope of work.

¹ OSI also denies this allegation. It states that the materials are in the public domain and that Hooper Goode itself copied the material from another source.

In our view, Hooper Goode's protest provides no basis on which to conclude that the price evaluation was unreasonable. As the protester notes, much of the price differential can be attributed to OSI's lower overhead. We have also been advised that OSI's daily rate for its instructors was somewhat lower; and as noted above, that a pre-award survey report recommended award to OSI after reviewing its ability to perform.

Whether OSI will be able to provide the required services at the price it offered is also a matter of responsibility. This is a firm-fixed-price contract and acceptance of an offer which is very low on a comparative basis does not provide a basis on which an award may be challenged where, as here, the contracting officer has made an affirmative determination of the awardee's responsibility, see Bob McDorman Chevrolet, Inc. and Jack Roach Cadillac, B-200846, et al., March 13, 1981, 81-1 CPD 194, and the proposal has been found to be acceptable under the announced evaluation criteria. Compare University Research Corporation, B-196246, January 28, 1981, 81-1 CPD 50 (a case dealing with the degree of a cost realism analysis necessary in the award of a cost-reimbursement contract).

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel